

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.3896 of 2004

Neyveli Lignite Corporation,
rep. by its Chairman-cum-Managing Director,
Neyveli 607 801.

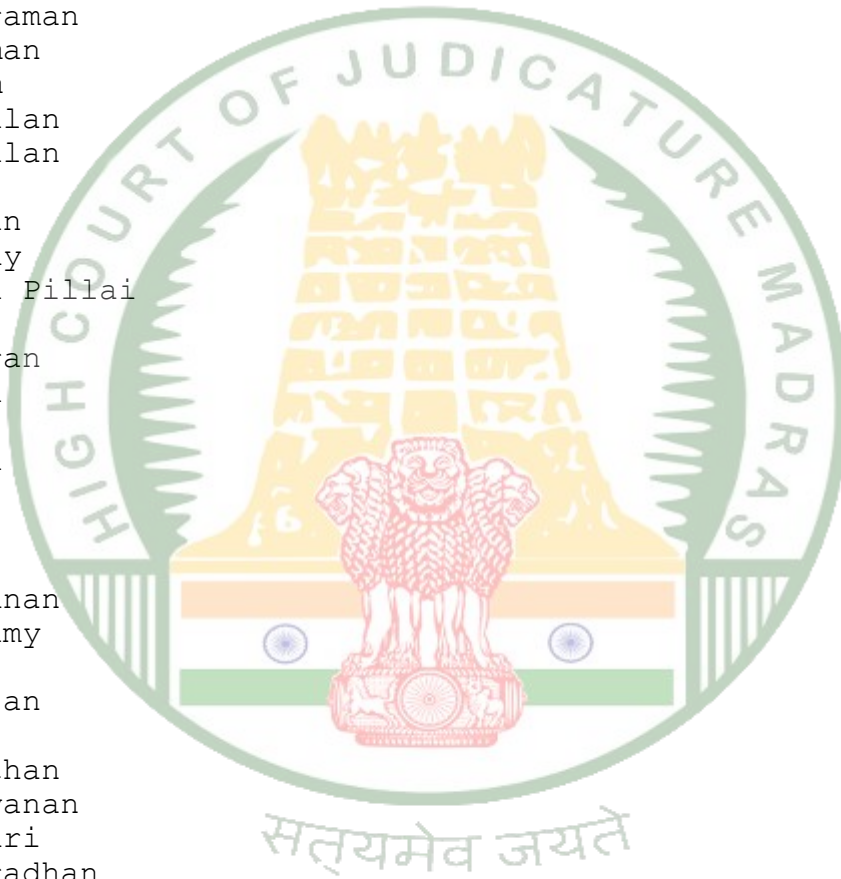
... Petitioner

vs.

1. The Appellate Authority,
(under Section 7(4) of Gratuity Act, 1972)
Regional Labour Commissioner,
(Central), Chennai - 6.
2. Kasturi.A.R.
3. S.Ramanathan
4. S.Venkatasubramaniam
5. R.Badrinath
6. B.R.Satagopan
7. S.Natarajan
8. V.Balasubramaniam
9. C.N.Ramasubramaniam
- 10.T.K.Mallikeswaran
- 11.R.Balasubramaniam
- 12.K.T.P.Menon
- 13.K.R.Damodaran
- 14.T.K.Venkatasubramaniam
- 15.Loganathan Mudaliar
- 16.C.R.Palaniswamy
- 17.M.R.Vedantam
- 18.R.Ramachandran
- 19.K.Balakumar
- 20.B.Parthasarathy
- 21.C.R.Krishnamurthy
- 22.S.Vinayagam
- 23.D.Srinivasan
- 24.K.Sampath
- 25.T.G.Rangan
- 26.M.K.Parthasarathy
- 27.T.K.Srinivasan
- 28.N.Ganapathy
- 29.S.Sivakumar
- 30.V.Sundaresan
- 31.V.Balasubramanian

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32.A.Ramaswamiah
33.N.R.Rajendran
34.T.R.Sivaraman
35.C.V.Chellam
36.T.P.Suryanarayana
37.V.Seetharamiah
38.R.S.Ramamoorthy
39.C.R.Vittal Rao
40.C.Venkataraman
41.S.A.Lakshmipathy
42.C.Mohammed Haroon
43.G.R.Bhandari
44.T.L.Anantharaman
45.R.Sundararaman
46.M.S.Kailasam
47.T.N.Venugopalan
48.T.N.Venugopalan
49.R.Alavandar
50.S.Swaminathan
51.Parthasarathy
52.N.Subramania Pillai
53.R.Desikan
54.N.Ramachandran
55.K.R.Vasudeva
56.V.Irajaram
57.V.Srinivasan
58.R.Veerasingam
59.D.Retnaraj
60.M.Arumugam
61.G.Radhakrishnan
62.K.A.Doraiswamy
63.V.Thyagaraj
64.L.V.Srinivasan
65.R.Krishnan
66.S.Kailasanathan
67.sankaranarayanan
68.T.K.Dhathathri
69.K.Srinivasaradhan
70.T.G.Rangan
71.S.Abiramasharma
72.C.R.Santhanagopalan
73.Mar Meyappan
74.P.Athmanathan
75.S.Dasaratha Ramiah
76.H.Sundararajan
77.N.Balakrishnan
78.R.S.Sivaraman



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...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records relating to the order of the first respondent passed in Gratuity Appeal Nos.430 to 506 of 2003, dated 31.01.2004, and quash the same.

For Petitioner : Mr.N.A.K.Sarma

For Respondents: Mr.Guberan,
for M/s.Rank Associates for R 3 to 6, 8 to 26,
28 to 55, 57 to 61, 63 to 71, 73 to 75 and 78

ORDER

This writ petition has been filed seeking to quash the order of the first respondent passed in Gratuity Appeal Nos.430 to 506 of 2003, dated 31.01.2004.

2. The case of the petitioner, in a nutshell, is as follows :

(i) The petitioner Corporation is a Central Public Sector undertaking under the administrative control of the Ministry of Coal, Government of India, engaged in mining Lignite from the mines situated in Neyveli and in generating power by using the lignite so mined. The petitioner Corporation has on its rolls, about 18,000 employees. Initially, when Payment of Gratuity Act, 1972 was enacted, the upper ceiling on gratuity under Section 4(3) was Rs.30,000/-. From time to time, the ceiling was enhanced and subsequent to the issue of Ordinance in September 1997, the petitioner Corporation increased the ceiling to Rs.2.5 lakhs with effect from 24.09.1997. Later on, the ceiling was further increased to Rs.3.5 Lakhs under Section 4(3) by the amending Act 11 of 1998. Prior to 24.09.1997, the upper ceiling under Section 4(3) of the Act, 1972 was fixed as Rs.1 Lakh.

(ii) On superannuation, respondents 2 to 78 applied for payment of gratuity in terms of Rule 7 of the Rules, 1972 and the petitioner Corporation authorised the payment of Rs.1 Lakh as gratuity payable and the same was duly disbursed within the prescribed time. The retired respondents 2 to 78 received the gratuity amount without any objection. After the enhancement in the ceiling of gratuity payment, respondents 2 to 78 formed an association under the name 'Neyveli Retirees Welfare Association' and filed a writ petition in W.P.No.9025 of 2000 seeking to approve the payment of gratuity to the employees of the Corporation, who had retired after 1.04.1995 upto a ceiling of Rs.2.5 lakhs and also for interest at the rate of 15% per annum from the date of retirement.

(iii) Suppressing the pendency of the writ petition in W.P.No.9025 of 2000, the respondents went before the Assistant Labour Commissioner (C) - II, Chennai for the relief as stated above. The

Assistant Labour Commissioner, in his capacity as Controlling Authority under the Act, 1972, directed the petitioner Corporation to pay the difference in amount of gratuity as per Form 'R'. Aggrieved by the decision of the Controlling Authority, the petitioner Corporation filed a batch of appeals in terms of Section 7 of the Act, 1972 and the same was partly allowed by the Appellate Authority on 31.01.2004. Aggrieved by the order of the first respondent, the petitioner Corporation has preferred this writ petition for the aforesaid relief.

3. On behalf of respondents 2 to 78, respondents 7 and 62 have filed their counter.

(i) It is their case that the petitioner Corporation can function on its own independently within the framework of its Memorandum and Articles of Association. The Article 77(16) of the Articles of Association of NLC has been vested with specific powers to award better benefits under the Gratuity Act. It is also their case that there was no requirement for the Company to obtain the approval from the Government for such provision of better benefits to its employees. Their plea for payment of better gratuity through several representations to the petitioner Corporation had been denied even after the Resolution passed by the petitioner Corporation in its meeting held in September 1995, assuring the approved payment of gratuity based on the enhanced ceiling of Rs.2.5 lakhs.

(ii) After the Board Resolution, the petitioner Corporation moved the Controlling Authority under the Gratuity Act for appropriate reliefs and the Controlling Authority came to a just and fair conclusion that the retired employees are entitled to receive the enhanced gratuity amount as per Section 4(5) of the Gratuity Act, which the Board of the said Company had also approved. Aggrieved by the said order of the Controlling Authority, the petitioner Company has approached the Appellate Authority and the Appellate Authority was also not in agreement with the contention of NLC and the appeal was dismissed in part and NLC was directed to pay the enhanced gratuity amount without interest. However, before preferring the appeal, NLC has deposited the entire amount and has now approached this Court by filing the present writ petition.

(iii) The respondents have submitted that the writ petition itself is liable to be dismissed on the ground that at the time of admitting the writ petition, the petitioner appears to have relied on a judgment of the Supreme Court reported in Judgment Today 2001 (5) SC 635, which according to them is not relevant to their case, since NLC, in its own Memorandum filed before the Appellate Authority on 28.01.2004, had admitted and undertaken to pay the gratuity. The relevant portion of the Memorandum is extracted, as under :

"(b) By a recent Resolution dated 28.10.2003, the Board of Directors of the Corporation had decided as a matter of consideration and goodwill gesture to release payment of principal amount of gratuity with respect to the respondent former employees, reckoned as if the ceiling is Rs.2.5 Lakhs

and not Rs.1 Lakh and subject to fulfilling other eligible conditions. The Resolution further provided that the release of such increased gratuity is subject to the condition that the former employees accept the payment in full and final settlement of all their claims in respect of gratuity without any liability in interest on the Corporation....."

(iv) It is the case of the respondents that in view of the above undertaking, it is not open to the petitioner Corporation to set aside the order passed by the Appellate Authority, which has been passed on the basis of their own version. It is their further case that on account of the interim stay passed by this Court and pendency of this writ petition, the Appellate Authority has withheld the money deposited by the petitioner Corporation and many of the respondents are deprived of their lawful entitlement.

(v) At the stage when the matter was pending before the Appellate Authority, the petitioner Corporation has requested the Appellate Authority to refer the matter to Lok Adalat, which would go to show that the Corporation only wanted to negotiate for a lesser sum and not deprive the retired employees of their lawful entitlement. The decision of the Controlling Authority as well as the Appellate Authority has been arrived at after considering the issue involved and the orders as such, cannot be called as having been passed in violation of the statutory provisions and the principles of natural justice. The case of the respondents is that the petitioner was just and proper in invoking Section 4(5) of the Gratuity Act, since the resolution passed by the Board can be construed as an award/agreement between the Management and the employees. The action on the part of the employer was well within the provision of section 4(5) of the Act and the employer cannot approbate and reprobate. According to the respondents, as retired employees without any regular income, the gratuity will be of very great help to them at their old age. Hence, they prayed for dismissal of the writ petition.

4. Heard Mr.N.A.K.Sarma, learned Counsel appearing for the petitioner Corporation and Mr.Guberan, appearing on behalf of respondents.

5. Mr.N.A.K.Sarma, learned Counsel appearing for the petitioner Corporation contended that the Controlling Authority erred in entertaining the application filed by the Neyveli Retirees Welfare Association, as there is no provision or entitlement for an Association to file an Application under Section 7 of the Act, 1972. It was his further contention that the respondents have not even furnished a copy of the Form 'R' even during the proceedings in the Appeal, based on which, Form 'R' deserves to be reversed by quashing it. According to the learned counsel, the Appellate Authority ought not to have invoked the provision under Section 4(5) of the Act, inasmuch as the order is neither an award nor an agreement nor a contract between the Petitioner Corporation and either with the respondent Association or with the individual employees in whose favour Form 'R' has been issued.

6. In particular, learned counsel for the petitioner Corporation contended that the Appellate Authority has failed to appreciate that an authority created by the statute has to act under the provisions of the Act, 1972. Till 24.09.1997, under the Act, 1972, there was no statutory liability on the Corporation or employer to pay terminal gratuity in excess of Rs.1 lakh. Hence, the impugned order passed in exercise of Section 4(5) of the Act, 1972 is ultra vires and unjustified and the same has to be struck down. In support of his contention, learned Counsel for the petitioner Corporation has relied on a decision reported in JT 2001 (5) SC 635 in the case of Shitla Sharan Srivastava and others vs. Government of India and others, wherein the Honourable Supreme Court has held as follows :

"5. On the other hand, for the respondents, submissions were made supporting the stand of the Bank pointing out that the petitioners were retired prior to 24.09.1997. Sub-section 3 of Section 4 of the Act provided that the amount of gratuity payable to an employee shall not exceed Rs.1 lakh. By the Amendment Act, 1998, the ceiling limit was raised to Rs.3.50 lakhs to be effective from 24.09.1997. Since the petitioners had retired prior to the said date, were not entitled to the enhanced gratuity limit. The 5th Pay Commission recommendations and the speech of Finance Minister made while presenting the Budget for the year 1997-98 and the circulars or memorandums issued by the Central Government undertakings giving benefit of enhanced ceiling limit of gratuity amount either from 01.04.1995 or from 01.01.1996 as the case may be, are neither binding on the respondent Bank nor they can be applied to the petitioners who have retired prior to 24.09.1997.

6. It is not disputed that the claim made in these petitions is in respect of the employees who retired prior to 24.09.1997. The respondent-Bank has its own service rules/schemes governing its employees. The 5th Pay Commission recommendations are in relation to the Central Government Employees. A mere speech made by the Finance Minister without taking further steps to give the benefit of enhanced ceiling limit of gratuity amount specifically in the case of the respondent-Bank is of no help to the petitioners. The service rules governing employees of RBI/IDBI and Central Government employees are different. The Act was amended in 1998 fixing the ceiling of payment of gratuity at Rs.3.5 Lakhs effective from 24.09.1997. Assuming that the respondent-Bank had made profit, the claims of the petitioners cannot be allowed unless there is a sustainable foundation for such a claim. The respondent-bank has pointed out that the officers of the Bank are governed by the Pension Rules and are paid gratuity, only in terms of the Act, while the compassionate gratuity is a separate scheme to provide succor to the bereaved families of

the officers who die in harness and the effective date of revision is fixed by the Executive Committee of the Central Board at Rs.1 lakh with effect from 01.01.1986, Rs.2.5 Lakhs with effect from 01.04.1995 and Rs.3.5 Lakhs with effect from 01.01.1996. The compassionate gratuity, as stated above, is different from the gratuity amount payable under the Act. Office memorandum dated 27.10.1997 relied upon by the petitioners categorically provides that those orders apply to Central Government employees governed by CCS (Pension) Rules, 1972. Further, the 5th Pay Commission recommendations are applicable to Central Government employees only and are not made applicable to the employees of the respondent Bank".

7. Per contra, Mr.Gubaran, learned Counsel for the respondents contended that the stand taken by the petitioner Corporation in having agreed to pay the difference in the gratuity amount to the respondents and thereafter, at a later point of time agitating before this Court in not paying the same cannot be sustained. He further contended that the claim of the retirees is well within time and the same cannot be rejected on the ground of limitation.

8. According to the learned Counsel for the respondents, the action of the petitioner Corporation requesting for indulgence of the Appellate Authority to permit them to refer the matter to Lok Adalat would itself go to show that the petitioner Corporation only wanted to negotiate for a lesser sum and not to grant the respondents their lawful entitlement. It is the further contention of the learned counsel that the authorities below have legally considered the issue in accordance with the statutory provisions and the principles of natural justice and it cannot be called as having been passed in violation of the same. Since many of the respondents were prevented from withdrawing the money that has been deposited by the petitioner Corporation already, the learned Counsel pleaded that the writ petition may be dismissed, thereby granting the respondents their lawful entitlement.

9. I have considered the submissions made by the learned counsel on either side.

10. Admittedly, respondents 2 to 78 were employees of the petitioner Corporation and there is no dispute that they retired between 01.04.1995 and 24.09.1997 from the service of NLC and it is also not in dispute that they are entitled to Gratuity. It is seen that pursuant to certain demands from the employees of the petitioner Corporation, a proposal was internally mooted for increasing the ceiling of the gratuity payable to Rs.2.5 lakhs, with effect from 01.04.1995 and such proposal was provisionally approved by the Board of Directors on 30.09.1995. Subsequent to the Ordinance in September, 1997, the petitioner Corporation increased the ceiling to Rs.2.5 lakhs with effect from 24.09.1997. Later on, the ceiling was further increased to Rs.3.5 lakhs after Section 4(3) was amended by the amending Act 11 of 1998.

11. The petitioner Corporation, being a Central Public Sector Undertaking under the administrative control of the Ministry of Coal, Government of India, is governed by its Memorandum and Articles of Association. Under Article 77(16) of the Articles of Association of NLC, the Board of Directors of NLC have been vested with specific powers to award better benefits under the Gratuity Act. On the representations made by the employees of the petitioner Corporation for payment of better gratuity, the Company's Board had approved payment of gratuity based on the enhanced ceiling of Rs.2.5 lakhs in its Board meeting held during September 1995. Since no steps were taken by NLC with regard to the implementation of the enhanced ceiling of gratuity, respondents 2 to 78 approached the Authority under the Gratuity Act for appropriate relief and the Controlling Authority, taking note of Sections 6(4)(a), 6(4)(b) and 6(4)(c), came to a just and fair conclusion that the retired employees are entitled to receive the enhanced gratuity amount as per Section 4(5) of the said Act, which the Board of the said Company had also approved and directed the petitioner Corporation to pay the difference in payment of gratuity to the respondents after amendment of the Act over the ceiling limit of gratuity amount with simple interest @ 10% per annum from the date it became due till the date of payment.

12. Aggrieved by the order of the Controlling Authority, NLC went on a batch of appeals before the Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972 and Rule 18 of Payment of Gratuity Rules. Taking note of the core issues, particularly, whether the respondents/employees are eligible for the enhanced gratuity as per Section 4(5) of the Act in terms of the Resolution passed by the Board and if there is any need to seek the approval or ratification from the parent Ministry to which they belong when the Parliament has amended the revised payment of gratuity to the employees and taking note of the Board Resolution and the Memorandum filed by the petitioner Corporation, the Appellate Authority allowed the appeals in part, holding that the respondents/employees are entitled and rightly eligible to receive the enhanced gratuity under Section 5(4) of the Act. It also held that the respondents/employees are eligible to receive only the amount of enhanced gratuity as per the amended Act but, as per the Board decision on 30.09.1995 and 28.10.2003 under Section 4(5) of the Act, the question of ratification or the approval from the Ministry of Coal, Government of India has no relevance at all when the amendment has been passed by the Parliament and the same notified by the Government of India after the Ordinance was passed earlier and the Board has extended these benefits under the Resolution. For better understanding, the order dated 31.01.2004 passed by the Appellate Authority, is extracted as under:

"And keeping in view of the goodwill and gesture of the Appellant Corporation and Resolution passed in 1995 and 2003 wherein the Appellant Corporation passed payment of enhanced gratuity amount in terms of Section 4(5) without interest to all the above-mentioned respondent employees sinace all the

employees had retired from service much before the Act was promulgated. Accordingly, by partially modifying the earlier Orders of the Controlling Authority, I hereby allow the enhanced gratuity as per the entitlement but without any interest since most of these respondent employees were not on rolls as on September, 1997 based on the Memo and Arguments filed on 30.01.2004.

However, such of those respondent employees who have retired on or after the above amendment to receive higher amount of gratuity amount whose ceiling amount has been enhanced to receive enhanced gratuity with interest as per sub-section 3A of Section 7 of the Act."

13. It is an admitted fact that the Board of Directors of the petitioner Corporation has, in its 273rd Board Meeting held on 13.09.1995 approved the proposal for incorporating the revised maximum limit of payment of Gratuity to Rs.2.5 lakhs and the petitioner Corporation, being an 'employer' has approved the enhancement of gratuity and accordingly, the employees were eligible to receive better terms of gratuity as per Section 4(5) of the Act. After getting convinced about the genuineness and justification of the enhancement, the Controlling Authority ordered payment of difference in payment of gratuity to the respondents after amendment of the Act over the ceiling limit of gratuity amount with simple interest @ 10% per annum. But, the Appellate Authority in his order has made it clear that the respondent employees are eligible to receive only the amount of enhanced gratuity as per the amended Act without interest.

14. Having regard to the facts and circumstances and in view of the foregoing discussion, I am of the considered view that the authorities below have taken note of the relevant provisions of the Act, the approval granted by the Board of the petitioner Corporation as well as the Resolution passed by them. Having filed a Memorandum before the Appellate Authority, accepting to pay the benefits to the employees as approved by them, the petitioner Corporation has no other option but to pay the due entitlement to the retired employees, who had put long years of service and are languishing for the benefits in their old age. Hence, I am of the view that the Controlling Authority as well as the Appellate Authority have fairly considered the issue by directing the petitioner Corporation to pay the benefits to the retired employees. In the absence of any appeal by the retired employees, respondents 2 to 78 herein, in respect of rejection of payment of 10% interest by the Appellate Authority, I find that the order passed by the Appellate Authority is perfectly in conformity with the legal provisions and there is no reason to interfere with it. As such, the order of the appellate authority which has no infirmity whatsoever, is upheld.

In view of the above, this writ petition which is devoid of any merit, fails and stands dismissed. No costs. Consequently, connected W.V.M.P.No.590 of 2004 and W.P.M.P.No.4573 of 2004 are closed.

abe

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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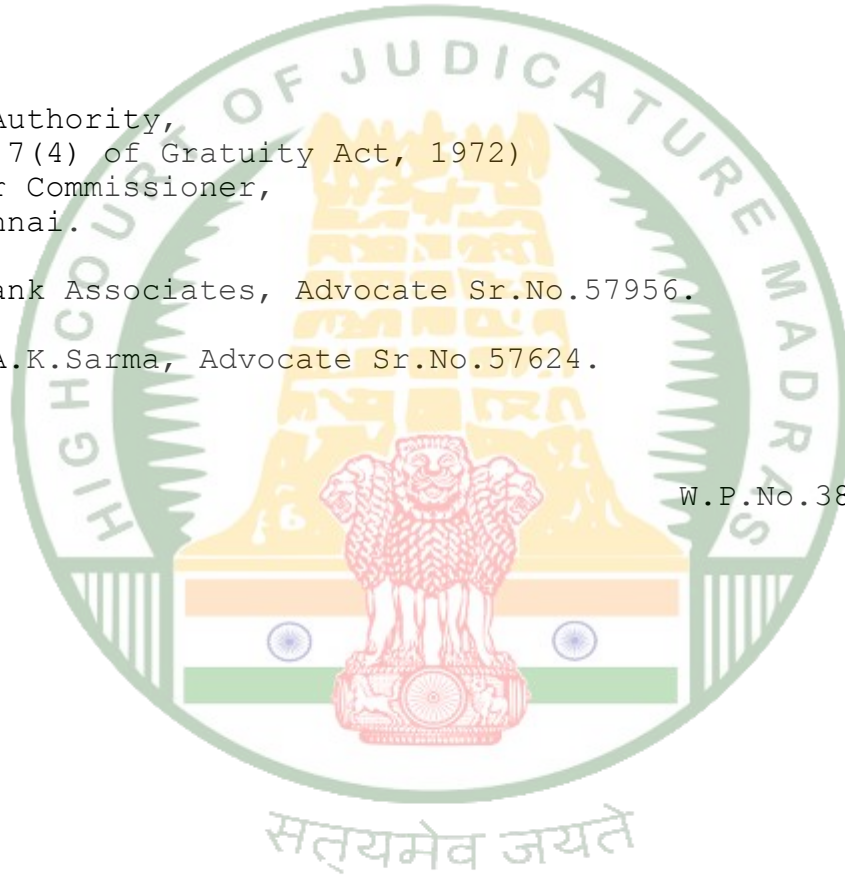
The Appellate Authority,
(under Section 7(4) of Gratuity Act, 1972)
Regional Labour Commissioner,
(Central), Chennai.

+1 cc to M/s.Rank Associates, Advocate Sr.No.57956.

+1 cc to Mr.N.A.K.Sarma, Advocate Sr.No.57624.

LA(CO)
dcp/27.9

W.P.No.3896 of 2004



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